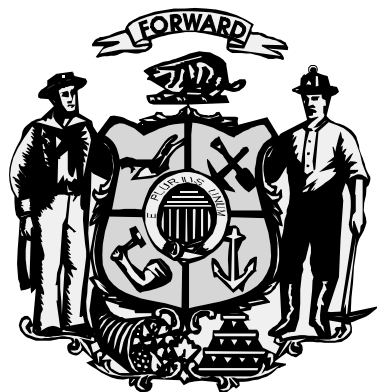


RECALL OF LOCAL ELECTED OFFICIALS

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(Recall Petition Revised 7/2003)



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FOR RECALL OF COUNTY OFFICIALS



This manual provides general information about the recall process, and was created to assist clerks and other interested persons with respect to recall procedures for *local* (city, village, town, and school district) officials.

Section 9.10, stats., also provides for the recall of county officials. However, the procedures for the recall of a county official differ from the procedures described in this manual in the following three ways:



A petition for the recall of a county officer shall be signed by electors equal to at least **25% of the vote cast for the office of governor** at the last election within the same district or territory as that of the officeholder being recalled. s.9.10(1)(b), stats.



No statement of reason for the recall of a county officer is required. s.9.10(2)(b), stats.



The last date that a petition for the recall of a county officer may be offered for filing is 5:00 p.m. on the 60th day commencing after registration. s.9.10(2)(d), stats.



If you have any questions with respect to recall procedures, please contact the State Elections Board at 608-266-8005 and ask to speak with an Elections Specialist.





Change in Recall Petition Requirements



As of August 1, 2000, 1999 Wisconsin Act 182 replaced the Affidavit of Circulator on election-related petitions with a Certification of Circulator.

The circulator is required to certify to the statement at the bottom of the petition. There is no longer a requirement for the circulator to swear to the statement before a person authorized to administer oaths.

The Recall Petition (Form EB-170) has been revised to reflect this change. Any references in the manual to the notary requirement are no longer applicable.

RECALL OF LOCAL ELECTED OFFICIALS

Wisconsin statutes provide to the citizens of cities, towns, villages, and school districts the right to recall their local elected officials. This is an extension of the right to recall state and county officials found in the Wisconsin Constitution since November, 1926.

Recall gives voters the right to reconsider their choice of an elected official, however, it does not automatically result in removal of an official from office. It provides an opportunity for voters to require an elected official to run for office again before the expiration of his or her term. The requirements for initiating recall efforts are very specific and must be carefully followed.

The statutory provisions for recalling local elected officials are provided in §9.10, Wis. Stats. These include registering with the appropriate filing officer, and preparing, circulating, and filing a petition. A **GLOSSARY OF TERMS** used in the discussion of recall procedures is found on pages 10-11.

WHO CAN BE RECALLED?

Any local elected officeholder who has served one year of the term for which he or she was most recently elected, as of the date the recall petition is offered for filing, can be recalled.

If the regular term of an elected officeholder's position is scheduled for re-election at the spring election to be held within six weeks of the date the recall petition is filed, a recall election cannot be held.

WHO CAN INITIATE RECALL?

Any qualified elector of the election district from which the officeholder was elected may circulate a recall petition. A qualified elector is a United States citizen, 18 years of age or older, who has resided in the district or jurisdiction for at least 10 days. The person who files the recall petition is referred to as the petitioner.

REGISTRATION OF RECALL COMMITTEE

Before circulating a petition for recall the petitioner must register with the appropriate filing officer. (See **GLOSSARY OF TERMS** for definition of filing officer.) Registration is accomplished by filing a Campaign Registration Statement (EB-1) under §11.05(1) or (2), Wis. Stats. A registration form is attached to this manual.

A statement must be attached to the registration form indicating:

- a) the petitioner's intent to circulate a recall petition,
- b) the name of the officeholder for whom recall is sought, and
- c) the reason for the recall which is related to the official responsibilities of the officeholder (the same reason must appear on the petition).

After the petitioner has completed registration with the filing officer, circulation of the petition may begin.

PETITION FORMAT REQUIREMENTS

The format of a recall petition must meet certain statutory requirements. The preparation and form of the petition are governed by §8.40, Wis. Stats. Attached to this manual is a sample Recall Petition (EB-170).

1. Every recall petition must have on its face, at the top, in bold print, the words **RECALL PETITION**.

2. The recall petition must identify the name of the officeholder. If more than one officeholder is to be recalled, a separate petition must be circulated and filed for each. Only one officeholder can be named on a recall petition.

3. The petition must contain a statement of the reason for the recall which is related to the official responsibilities of the officeholder.

4. Each petition must provide a space for electors to:

- a) sign their name,
- b) list their municipality of residence, along with the post office address, including street and number, if any, or rural route (the address must be complete and clearly show that the signer resides in the district or jurisdiction represented by the officeholder), and
- c) list the date of signing.

5. Each separate sheet of a recall petition must contain an Affidavit of Circulator.

CIRCULATING THE RECALL PETITION

Circulation of the recall petition must be completed within 30 days of registration. The completed petition must be returned to the filing officer, that is, offered for filing, no later than 5:00 p.m. on the 30th day from the date of registration. Any signature on a recall petition that is dated before the date of registration or more than 30 days after registration is invalid.

NUMBER OF SIGNATURES REQUIRED

The petition must contain the signatures of qualified electors equal to at least 25% of the vote cast for the office of President of the United States at the last presidential election held within the same district or jurisdiction as that of the officeholder. The filing officer is required to determine, and inform any interested person upon request, the number of signatures required to recall an officeholder of that district or jurisdiction.

INDIVIDUAL SIGNATURE REQUIREMENTS

The specific requirements that apply to each signature on a petition to recall a local officeholder are listed here and can also be found in El.Bd. 2.09, Wis. Adm. Code.

1. The signature listed must be that of a qualified elector of the jurisdiction or district represented by the officeholder.
2. The full address, including municipality of residence, of each signer must be listed on the petition and must be within the election district or jurisdiction of the officeholder.
3. Each signature must be dated when it is affixed to the petition.
4. The date of the signature must be within 30 days from the date the recall petitioner registered with the filing officer.
5. The date of the signature must not be later than the date of notarization of the circulator's signature in the Affidavit of Circulator.

AFFIDAVIT OF CIRCULATOR

Each page of a recall petition must contain the Affidavit of Circulator. The language of the affidavit must comply with the requirements of §8.40(2), Wis. Stats. After the signatures are obtained the affidavit must be completed by the circulator, and sworn to and signed by the circulator in the presence of a person authorized to administer oaths.

Specific requirements of the circulator are:

1. The circulator must be a qualified elector of the district or jurisdiction represented by the officeholder.
2. The circulator must list his or her full address, including municipality of residence, and street and number, if any, or rural route.

3. The person signing as circulator must have personally circulated the petition and personally obtained each of the signatures on the paper.

4. The circulator must state that he or she is aware that falsifying the affidavit is punishable under §§12.13(3)(a) and 946.32(1)(a), Wis. Stats.

5. The affidavit must be signed and dated by a notary public or other person authorized to administer oaths. A notary public must list the date of expiration of his or her term. If the oath is administered by someone other than a notary public, that person must list his or her title.

REVIEW OF PETITION BY FILING OFFICER

Within 31 days after the petition is offered for filing, the filing officer is required to determine the sufficiency of the petition. El.Bd. 2.09, Wis. Adm. Code. A careful review of the face of the petition must be done by the filing officer to verify that:

1. The format of the petition follows the requirements of §8.40, Wis. Stats.

2. The petition contains all the information required under §9.10, Wis. Stats., and clearly informs the electorate of the intentions of the petitioner.

3. Each signer is a qualified elector of the district represented by the officeholder.

4. The address listed by each signer is within the district represented by the officeholder.

5. The date of signing for each elector is within the 30 day circulation period, and not later than the date of notarization.

6. The circulator has properly completed the Affidavit of Circulator. (See previous section for requirements of circulator.)

NOTE: The officeholder who is the subject of the recall petition may file a written challenge to the petition. (See **CHALLENGES TO A RECALL PETITION** on page 8.)

CERTIFICATE OF SUFFICIENCY/INSUFFICIENCY

The filing officer's findings must be stated in a certificate attached to the petition within 31 days after the petition is offered for filing. The filing officer must allow at least 10 days before attaching the certificate to permit the officeholder time to

file any challenge to the petition. The certificate must state the number of petition sheets filed with the filing officer and the number of valid signatures.

The filing officer shall immediately transmit the certified petition to the appropriate local governing body, or for recall of a school board member, to the school board.

If the petition is found to be sufficient, the governing body must set a date for the recall election.

If the petition is found to be insufficient, the certificate shall state the particulars creating the insufficiency. (See **CORRECTING AN INSUFFICIENT PETITION** on page 7.)

DATE OF RECALL ELECTION

The governing body of the district represented by the officeholder (city council, town board of supervisors, village trustees, school board, or board of election commissioners) shall call an election on the Tuesday of the 6th week commencing after the date on which the clerk issues the certificate of sufficiency. If that Tuesday is a legal holiday, the recall election shall be held on the first day after Tuesday which is not a legal holiday.

Recall Primary

If more than two persons compete for the office, a recall primary will be held on the date originally set for the recall election. The recall election will then be held on the Tuesday of the fourth week after the recall primary. If that day is a legal holiday, the recall election will be held on the first day after Tuesday which is not a legal holiday.

The two candidates receiving the highest number of votes in the recall primary will be certified to appear on the ballot in the recall election. If, however, the incumbent officeholder or any other candidate at the recall primary receives the majority of the total number of votes cast in the recall primary, that person shall hold the office for the remainder of the term and the recall election will not be held.

CANDIDATES AT THE RECALL ELECTION

The officeholder against whom the recall petition is filed will be a candidate at the recall election, or at the primary if a primary is required, unless the officeholder resigns within 10 days after the date the certificate of sufficiency is issued. There are no filing requirements for an incumbent officeholder. All other candidates must register, circulate and file nomination papers, and

file a declaration of candidacy with the appropriate filing officer. A copy of the most current forms should be available from the local filing officer.

If a candidate fails to file any of the three forms by the filing deadline of 5:00 p.m. on the 4th Tuesday before the recall election, the candidate's name will not be placed on the ballot.

Campaign Registration Statement (EB-1)

Candidates at the recall election must register with the appropriate filing officer by filing a Campaign Registration Statement (EB-1), as soon as they form the intent to be a candidate and before receiving contributions or making disbursements. The deadline for registration is 5:00 p.m. on the 4th Tuesday before the date of the recall election.

Nomination Papers for Nonpartisan Office (EB-169)

Candidates at the recall election for city, village, and town offices must circulate and file nomination papers, regardless of the method used for nomination at other elections. Candidates at the recall election for school district offices only file nomination papers if that is the method used for regular elections. The proper form is Nomination Paper for Nonpartisan Office (EB-169). The nomination papers must contain at least the required minimum number of valid signatures of qualified electors and must be filed no later than 5:00 p.m. on the 4th Tuesday before the date of the recall election. (For the number of signatures required, check with the filing officer, or refer to §8.10(3), Wis. Stats.)

Candidates for the recall election must designate, on their nomination papers, which position they are seeking, and in the case of multiple positions for at-large seats, which officeholder they are opposing. If more than one village trustee, town supervisor, or school board member is being recalled, the nomination papers must clearly state which of the officeholders the candidate is opposing. For example, for at-large seats such as school board member, the papers must state "School Board Member for the position currently held by (insert officeholder's name)."

Declaration of Candidacy (EB-162)

A Declaration of Candidacy (EB-162) must also be filed by candidates at the recall election no later than the deadline for filing nomination papers. The candidate must designate on this form the same office title as appears on the nomination papers.

RECALL OF MORE THAN ONE OFFICEHOLDER

When more than one petition is filed at the same time for the recall of more than one officeholder from the same district, each petition must be handled separately. If the recall petitions are found to be valid, a separate election contest will be required for each incumbent officeholder. For example, if valid petitions are filed to recall two school board members, there will be two recall elections. If only one of these positions requires a recall primary, because three or more candidates are seeking this position, the recall primary will be held on the same day as the recall election for the other position.

When more than one position is to be listed on a single ballot, each position must be listed separately with instructions to electors to vote for one candidate for each position.

INTERIM POSITION OF INCUMBENT OFFICEHOLDER

If the officeholder resigns after the completion of the petitioner's registration, but before the filing of the petition, or before the primary or election, the recall proceeds unaffected.

If the officeholder does not resign, he or she continues to perform the duties of the office. If the incumbent is defeated at the recall election, he or she continues to perform the duties until a certificate of election is issued to the successor.

Once a recall petition has been filed and a recall election has been held, no further recall petitions can be filed against the officeholder during the term for which he or she was elected.

CORRECTING AN INSUFFICIENT PETITION

If a recall petition is found to be insufficient, a petitioner may amend the petition by filing affidavits or other proof correcting certain insufficiencies within 5 days following the attachment of the original certificate by the filing officer.

Correctable insufficiencies include, but are not limited to:

- a) expired notary commission dates,
- b) failure of the notary to sign the petition,
- c) failure to indicate the duration of a notary commission,
- e) the omission of the title and term of office of any other person authorized to administer the oath, and
- f) the failure of the circulator to sign the affidavit or to include all required information.

Within 2 days after the amended petition is offered for filing, the filing officer shall again carefully examine the face of the petition to determine its sufficiency and attach an amended certificate stating the findings.

The filing officer shall immediately transmit the certified petition to the appropriate local governing body, or for recall of a school board member, to the school board.

CHALLENGES TO A RECALL PETITION

Challenges

Within 10 days after a recall petition is offered for filing, the officeholder can challenge its sufficiency. The challenge must be made in the form of a written sworn complaint.

The challenge must specify any alleged insufficiency in the petition. Any challenge to the validity of signatures on a recall petition must demonstrate by affidavit or other supporting evidence a failure to comply with statutory requirements. The burden of proof is on the challenger. The information on a recall petition is presumed to be valid unless proven otherwise. El.Bd. 2.11, Wis. Adm. Code.

Some of the grounds for challenge and the resulting effect are:

1. An elector has signed the recall petition more than once - the second and subsequent signatures are not counted.
2. A person signed the name of another elector - the signature may not be counted, unless the elector was unable to sign due to physical disability and authorized the individual to sign in his or her behalf. In this case, a notation clarifying the situation should be made on the petition by the signer.
3. The date of a signature is altered and the alteration changes the validity of the signature - the signature may not be counted.
4. An individual is ineligible to sign the petition because he or she is not a qualified elector of the district or jurisdiction - the signature may not be counted.
5. A challenger establishes that the purpose of the petition was misrepresented by the circulator and the signer was not aware of the purpose of the petition - the signature may not be counted.
6. A signature is obtained before the first day for circulation, after the last day for circulation, or after the date the oath is administered to the circulator - the signature may not be counted.

When a challenge is made, the filing officer must review the challenge, all rebuttals, and replies, and make a determination of sufficiency within 14 days after the expiration of time allowed for such challenges, rebuttals, and replies.

Rebuttals and Replies

Within 5 days after a challenge is filed, the petitioner may file, with the filing officer, a written rebuttal to the challenge.

Within 2 days after the filing of a rebuttal, the officeholder may file a reply to any new matter raised in the rebuttal.

Within 14 days after this time period has passed, the filing officer must attach the certificate of sufficiency/insufficiency.

APPEAL OF DETERMINATION OF SUFFICIENCY

After a certificate of sufficiency/insufficiency has been issued, any elector of the jurisdiction or district dissatisfied with the determination (including the incumbent officeholder or the petitioner) may file a written sworn complaint with the State Elections Board. The complaint must be filed promptly (within 10 days that the complainant knew or should have known of the determination) so as not to prejudice the rights of any other party.

The complaint must include statements of fact based on the knowledge and belief of the complainant that: (1) the issuance of the certificate is contrary to law, or (2) the filing officer abused his or her discretion with respect to the determination of sufficiency/insufficiency.

The complaint may be accompanied by relevant supporting documents and a request that the filing officer be required to correct his or her determination and issue a new certificate that is consistent with law. §5.06(1), Wis. Stats. The State Elections Board will conduct an investigation and decide the matter. The Board may affirm or disaffirm the decision of the filing officer and state its findings in an order which will be immediately sent to the filing officer. If the filing officer's decision is disaffirmed, the Board's order will require the filing officer to correct the determination and issue a new certificate accordingly.

Any election official or complainant who is aggrieved by the Board's order may appeal the decision of the Board to the circuit court no later than 30 days after issuance of the order. The proper jurisdiction is the court for the county where the filing officer conducts business or where the complainant resides. The Board's order remains in effect while the appeal is pending, unless the circuit court orders otherwise.

CAMPAIGN FINANCE DISCLOSURE REQUIREMENTS

Petitioners seeking to recall elected officials must comply with the campaign finance disclosure requirements of Wisconsin law. Ch.11, Wis. Stats. The filing of a Campaign Registration Statement (EB-1) containing a declaration of intent to circulate a recall petition is treated as registration for campaign finance disclosure purposes. Anyone who wishes to oppose the recall by raising contributions, or by making disbursements or incurring obligations in excess of \$25, must also register with the same filing officer.

Any contributions raised and any disbursements made in support of, or in opposition to, the recall effort are required to be reported to the filing officer unless the registrant has applied and qualified for exempt status. The Campaign Finance Report (EB-2), which is used for all other campaign finance reporting, should be used to report all contributions, disbursements, and incurred obligations of a recall committee.

Any committee or individual who supports or opposes an effort to circulate a recall petition is required to file a Campaign Finance Report (EB-2), no later than 30 days after the date of registration or within 5 days after the recall petition has been filed, whichever is earlier. The filing officer must send notice of the filing deadlines and reporting periods to the recall committee and to any other recall registrant. After conclusion of the recall action, each registrant should file a termination report with the filing officer.

GLOSSARY OF TERMS

Affidavit of Circulator - a statement at the bottom of each sheet of a petition, which is sworn to and signed by the circulator in the presence of a person authorized to administer oaths, which conforms to the requirements of §8.40(2), Wis. Stats.

Campaign Finance Report - Elections Board form (EB-2) for financial disclosure, to be filed, if required, by the petitioner, candidates at the recall election, and other registrants supporting or opposing the recall effort.

Campaign Registration Statement - Elections Board form (EB-1), filed by petitioner to register intent to file a recall petition; each candidate at the recall election, except for the officeholder; and any others actively supporting or opposing the recall effort.

Circulation period - a 30-day period starting from the day of registration.

Circulator - a qualified elector who circulates a petition.

Declaration of Candidacy - Elections Board form (EB-162), a statement of qualification to hold office if elected, to be filed by all candidates at the recall election, except for the officeholder.

Filed - the recall papers have been reviewed and a certificate of sufficiency or insufficiency is attached by the filing officer.

Filing Officer - for town, village, or city offices, the appropriate municipal clerk - for school district offices, the school district clerk - for the City of Milwaukee, the Board of Election Commissioners.

Nomination Papers - Elections Board form (EB-169), for nonpartisan local offices, to be filed by candidates at the recall election, except for the officeholder.

Offered for filing - submitting the petition to the filing officer for review.

Officeholder - the elected official for whom recall is sought.

Person authorized to administer oaths - for purposes of a local recall - a notary public, a county clerk, a municipal clerk, and a school district clerk.

Petition - Elections Board form (EB-170), a sworn document which conforms to §8.40, Wis. Stats.

Petitioner - the individual or group initiating, circulating, and filing the recall petition.

Registration - the act of filing a Campaign Registration Statement (EB-1) with the appropriate filing officer along with a statement of intent to recall, which includes the name of the officeholder and the reason for recall.

Sworn Complaint - a written challenge, sworn to before a person authorized to administer oaths.

Questions concerning recall of local elected officials should be directed to the local filing officer or to the State Elections Board. This document has been prepared by staff of the:

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